



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2011-0029; FRL-9643-3]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; North Carolina and South Carolina; Charlotte; Determination of Attainment by Applicable Attainment Date for the 1997 8-Hour Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the bi-state Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina, 1997 8-hour ozone nonattainment Area (hereafter referred to as “the bi-state Charlotte Area” or “the Area”) has attained the 1997 8-hour ozone national ambient air quality standards (NAAQS) *by its applicable attainment date of June 15, 2011*. The determination of attainment was made by EPA on November 15, 2011, and was based on quality-assured and certified monitoring data for the 2008 – 2010 monitoring period. The bi-state Charlotte Area is comprised of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell (Davidson and Coddle Creek Townships) Counties in North Carolina; and a portion of York County in South Carolina. In this action EPA is determining to find that the above-identified Area attained the 1997 8-hour ozone NAAQS by its applicable attainment date. EPA is finalizing this action because it is consistent with the Clean Air Act (CAA) and its implementing regulations. Additionally, in this action EPA is clarifying an inadvertent citation error in the proposed approval for this action.

EFFECTIVE DATE: This final rule is effective on [insert date 30 days after publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R04-OAR-2011-0029. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.

FOR FURTHER INFORMATION CONTACT: For information regarding this attainment determination, contact Mr. Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Telephone number: (404) 562-9043; e-mail address: lakeman.sean@epa.gov. For information regarding 8-hour ozone NAAQS, contact Ms. Jane Spann, Regulatory Development Section, at the same address above. Telephone number: (404) 562-9029; e-mail address: spann.jane@epa.gov.

SUPPLEMENTARY INFORMATION:

- I. What Action is EPA Taking?**
- II. What is the Effect of This Action?**
- III. What is EPA's Final Action?**
- IV. Statutory and Executive Order Reviews**

I. What Action is EPA Taking?

Based on EPA's review of the quality-assured and certified monitoring data for 2008 – 2010, and in accordance with section 181(b)(2) of the CAA and EPA's regulations, EPA is determining that the bi-state Charlotte Area attained the 1997 8-hour ozone NAAQS by the applicable attainment date of June 15, 2011.¹

On November 15, 2011, EPA published a final rulemaking for the bi-state Charlotte Area which served to suspend the requirements for the State to submit an attainment demonstration and associated reasonably available control measures (RACM), reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the 1997 8-hour ozone NAAQS so long as the Area continues to attain the 1997 8-hour ozone NAAQS. *See* 76 FR 70656. This final rulemaking also includes useful background information on the 8-hour ozone NAAQS relevant to the bi-state Charlotte

¹ Effective June 15, 2004, EPA designated the bi-state Charlotte Area as a moderate area under the 1997 8-hour ozone NAAQS. Moderate areas for the 1997 8-hour ozone NAAQS had an applicable attainment date of June 15, 2010, unless the Area qualified for an extension. On May 31, 2011, EPA took final action to extend the applicable attainment date for the bi-state Charlotte Area to June 15, 2011. *See* 76 FR 31245 for more information.

Area. Today's action finalizes EPA's determination that the bi-state Charlotte Area attained the 1997 8-hour ozone NAAQS by the applicable attainment date of June 15, 2011. Today's action is simply focused on the date by which the Area had attaining data.

Other specific requirements of the determination and the rationale for EPA's action are explained in the notice of proposed rulemaking (NPR) published on December 29, 2011 (76 FR 81901). The comment period closed on January 30, 2012. No comments were received in response to the NPR.

Also, in the NPR, EPA stated that its obligations to determine if an area attained the 1997 8-hour NAAQS by its applicable attainment date were found under CAA section 179(c). *See* 76 FR 81902. The citation to section 179(c) was incorrect. EPA notes that for an area such as Charlotte, which is designated moderate nonattainment for the 1997 8-hour ozone standard, the proper citation is CAA section 181(b)(2)(A). Thus CAA section 181(b)(2) is the correct citation for the basis of today's action.

II. What is the Effect of This Action?

Today's action is a determination that the bi-state Charlotte Area attained the 1997 8-hour ozone NAAQS by its applicable attainment date of June 15, 2011, consistent with CAA section 181(b)(2). Finalizing this action does not constitute a redesignation of bi-state Charlotte Area to attainment of the 1997 8-hour ozone NAAQS under section 107(d)(3) of the CAA. Further, finalizing this action does not involve approving maintenance plans for the bi-state Charlotte Area as required under section 175A of the CAA, nor would it find that the bi-state Charlotte Area has met all other requirements for redesignation. The designation status of the bi-

state Charlotte Area remains nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Area.

III. What is EPA's Final Action?

EPA is determining, based on quality-assured and certified monitoring data for the 2008 – 2010 monitoring period, that the bi-state Charlotte Area attained the 1997 8-hour ozone NAAQS by the applicable attainment date of June 15, 2011. This action is being taken pursuant to section 181(b)(2) of the CAA and is consistent with the CAA and its implementing regulations.

IV. Statutory and Executive Order Reviews

This action makes a determination of attainment by the applicable attainment date, based on air quality, and would not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this determination of attainment by the attainment date for the 1997 8-hour ozone NAAQS final approval for the bi-state Charlotte Area does not have tribal implications as specified by Executive Order 13175 (65 FR 67,249, November 9, 2000), because the determination does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located within the South Carolina portion of the bi-state Charlotte nonattainment area. Generally SIPs do not apply in Indian country throughout the United States.

However, for purposes of the Catawba Indian Nation Reservation in Rock Hill, the South Carolina SIP does apply within the Reservation. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120, “all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” Pursuant to Executive Order 13175 and the EPA Policy on Consultation and Coordination with Indian Tribes, in a letter dated October 13, 2011, EPA extended the opportunity for consultation between EPA and Catawba. Consultation with the Catawba Tribe began on October 14, 2011, and ended on October 31, 2011. The views and concerns raised by the Catawba Indian Nation during consultation have been taken into account in this final rule. Furthermore, EPA notes today’s action will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be

filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of these final rules do not affect the finality of these actions for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping

requirements, Volatile organic compounds.

Dated: February 22, 2012

Signed: A. Stanley Meiburg,
Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II – North Carolina

2. Section 52.1779 is amended by adding paragraph (b) to read as follows:

§ 52.1779 Control strategy: Ozone.

* * * * *

(b) Based upon EPA’s review of the air quality data for the 3-year period 2008 – 2010, EPA determined that the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina, 1997 8-hour ozone nonattainment Area attained the 1997 8-hour ozone NAAQS by the applicable attainment date of June 15, 2011. Therefore, EPA has met the requirement pursuant to CAA section 181(b)(2) to determine, based on the Area’s air quality as of the attainment date, whether the Area attained the standard. EPA also determined that the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina, 1997 8-hour ozone nonattainment Area is not subject to the consequences of failing to attain pursuant to section 181(b)(2).

Subpart PP – South Carolina

3. Section 52.2125 is amended by adding paragraph (b) to read as follows:

§ 52.2125 Control strategy: Ozone.

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(b) Based upon EPA's review of the air quality data for the 3-year period 2008 – 2010, EPA determined that the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina, 1997 8-hour ozone nonattainment Area attained the 1997 8-hour ozone NAAQS by the applicable attainment date of June 15, 2011. Therefore, EPA has met the requirement pursuant to CAA section 181(b)(2) to determine, based on the Area's air quality as of the attainment date, whether the Area attained the standard. EPA also determined that the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina, 1997 8-hour ozone nonattainment Area is not subject to the consequences of failing to attain pursuant to section 181(b)(2).

[FR Doc. 2012-5384 Filed 03/06/2012 at 8:45 am; Publication Date: 03/07/2012]